

United States Postal Service

§ 952.21

§ 952.20 Witness fees.

The Postal Service does not pay fees and expenses for respondent's witnesses or for depositions requested by respondent.

§ 952.21 Depositions, interrogatories, requests for admission of fact and production of documents.

(a) Not later than 5 days after the filing of Respondent's answer, any party may file application with the Recorder for the taking of testimony by deposition. In support of such application the applicant shall submit under oath or affirmation a statement setting out the reasons why such testimony should be taken by deposition, the time and the place, and the name and address of the witness whose deposition is desired, the subject matter of the testimony of each witness and its relevancy.

(b) If the application is granted, the order for the taking of the deposition will specify the time and place thereof, the name of the witness, and require that the deposition be taken before a person authorized to administer oaths as required by paragraph (f) of this section.

(c) Each witness testifying upon deposition shall be duly sworn, and the adverse party shall have the right to cross-examine. The questions and answers together with all objections, shall be reduced to writing and, unless waived by stipulation of the parties, shall be read to and subscribed by the witness in the presence of the deposition officer who shall certify it in the usual form. The deposition officer shall file the testimony taken by deposition as directed in the order. The deposition officer shall put the witness on oath. All objections made at the time of examination shall be noted by the deposition officer and the evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, a party may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim. Objections to relevancy or materiality of testimony, or to errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation,

or in the conduct of the parties and errors of any kind which might be obviated, cured or removed if promptly presented, are waived unless timely objection is made at the taking of the deposition.

(d) At the hearing any part or all of the deposition may be offered in evidence by any party who was present or represented at the taking of the deposition or who had notice thereof. If the deposition is not offered and received in evidence, it shall not be considered as a part of the record in the proceeding. The admissibility of depositions or parts thereof shall be governed by the rules of evidence.

(e) The party requesting the deposition shall pay all fees required to be paid to witnesses and the deposition officer, and shall provide an original and one copy of the deposition for the official record, and shall serve one copy upon the opposing party.

(f) Within the United States or within a territory or insular possession, subject to the dominion of the United States, depositions or interrogatories may be taken or certified before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held; within a foreign country, depositions or interrogatories may be taken or certified before a secretary of an embassy or legation, consul general, vice consul or consular agent of the United States, or any other person designated in the order for the taking of a deposition.

(g) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. When a deposition is taken upon written interrogatories and cross-interrogatories, none of the parties except a witness who is a party shall be present or represented, and no person, other than the witness, a stenographic reporter, and the officer shall be present at the examination of the witness, which fact shall be certified by the officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words. For good cause shown or by stipulation of the parties, written

§ 952.22

interrogatories and cross-interrogatories propounding questions of fact may be answered by the witness in writing, without the presence of an officer and without being recorded by a stenographic reporter, provided the answers are sworn to by the witness before a person authorized to administer an oath prescribed by paragraph (f).

(h) Not later than 5 days after the filing of Respondent's answer, any party may serve on the other party a request for the admission of specified facts. In the event the party served refuses timely to respond to the request for admissions, the presiding officer for good cause shown may require the party served to admit or deny each requested fact. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the presiding officer's order for admission or denial.

(i) Not later than 5 days after the filing of Respondent's answer, either party may file an application for the production of documents or objects. The application shall state the cause therefor and specifically identify the documents or objects and their relevance and materiality to the cause or causes in issue. The presiding officer may order the other party to produce and permit the inspection and photographing of any designated documents or objects not privileged which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the presiding officer shall specify such terms and conditions in making the inspection and taking the copies and photographs.

(j) Failure of a party to comply with an order pursuant to this rule may result in the presiding officer's ruling that the disobedient party may not support or oppose designated charges or defenses or may not introduce designated matters in evidence. The presiding officer may also infer from the disobedient party's failure to comply with the order that the facts to which the order related would, if produced or admitted, be adverse to such party's interests. The admissibility of matter ad-

39 CFR Ch. I (7-1-02 Edition)

duced by operation of § 952.21 shall be governed by § 952.18.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61960, Oct. 29, 1979; 44 FR 65399, Nov. 13, 1979]

§ 952.22 Transcript.

(a) Hearings shall be stenographically reported by a contract reporter of the Postal Service under the supervision of the assigned presiding officer. Argument upon any matter may be excluded from the transcript by order of the presiding officer. A copy of the transcript shall be a part of the record and the sole official transcript of the proceeding. Copies of the transcript shall be supplied to the parties to the proceeding by the reporter at rates not to exceed the maximum rates fixed by contract between the Postal Service and the reporter. Copies of parts of the official record including exhibits admitted into evidence, other than the transcript, may be obtained by the Respondent from the Recorder upon the payment of reasonable copying charges. Items that cannot reasonably be photocopied may be photographed and furnished in that form to Respondent.

(b) Changes in the official transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. No physical changes shall be made in or upon the official transcript, or copies thereof, which have been filed with the record. Within 10 days after the receipt by any party of a copy of the official transcript, or any part thereof, he may file a motion requesting correction of the transcript. Opposing counsel shall, within such time as may be specified by the presiding officer, notify the presiding officer in writing of his concurrence or disagreement with the requested corrections. Failure to interpose timely objection to a proposed correction shall be considered to be concurrence. Thereafter, the presiding officer shall by order specify the corrections to be made in the transcript. The presiding officer on his own initiative may order corrections to be made in the transcript with prompt notice to the parties of the proceeding. Any